

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLARENCE JAY FAULKNER,

Plaintiff,

v.

ISRAEL “ROY” GONZALEZ, et al.,

Defendants.

CASE NO. 15-5072 RJB-JRC

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 37. The Court has considered the Report and Recommendation, Objections to the Report and Recommendation, pleadings filed regarding the Objections, and the remaining file.

In this civil rights case, Plaintiff, a pro se prisoner, asserts that Defendants violated his First Amendment rights to the U.S. Constitution when they rejected three publications that were either in Spanish, or contained Spanish, pursuant to former Department of Corrections (“DOC”) policy 450.100. Dkt. 5. Plaintiff seeks injunctive relief and damages. *Id.*

1 On April 25, 2016, the Report and Recommendation was filed, recommending that the
2 Plaintiff's claim for injunctive relief be dismissed because DOC policy 450.100 has been
3 changed to remove the challenged restrictions, and so Plaintiff's requested relief is now moot.
4 Dkt. 37. The Report and Recommendation further recommends that Plaintiff's claim for
5 damages be dismissed because the Defendants are entitled to qualified immunity. *Id.*

6 The Report and Recommendation (Dkt. 37) should be adopted and the case dismissed.
7 Plaintiff's objections (Dkt. 38) do not provide a basis to reject the Report and Recommendation.

8 Plaintiff objects by arguing that the publications at issue were English publications with
9 Spanish text, not "Spanish publications." Dkt. 38. Plaintiff makes no showing that the
10 characterization of the publications in the Report and Recommendation (whether "Spanish
11 publications" or English publications with Spanish text) is material to whether his rights were
12 violated, or whether he is entitled to relief.

13 The Report and Recommendation urges finding that Plaintiff's claim for injunctive relief
14 is moot because the Defendants repealed the policy. Dkt. 37. Plaintiff objects to the Report and
15 Recommendation's finding that Plaintiff had not shown that the policy was changed in response
16 to his lawsuit. Dkt. 38. Plaintiff points out that the ACLU was involved, and so, that "is
17 suggestive that a constitutional issue was being considered." *Id.*, at 3. The record indicates,
18 however, that the ACLU was involved before Plaintiff filed his case. Dkt. 33-1. He makes no
19 showing that the ACLU's involvement demonstrates that his constitutional rights were being
20 violated. Further, as stated in the Report and Recommendation, there is no showing that there is
21 a "reasonable expectation that the wrong will be repeated," so the claim for injunctive relief is
22 moot. Dkt. 37, at 7 (*quoting United States v. W.T. Grant Company*, 345 U.S. 167, 189, 193
23 (2000)).
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1 Plaintiff's objects to the Report and Recommendation's recommendation that the claim
2 for damages be dismissed because the Defendants are entitled to qualified immunity. Dkt. 38.
3 Plaintiff bears the burden to show that the law was clearly established at the time of the alleged
4 constitutional violations. *Davis v. Scherer*, 468 U.S. 183, 197 (1984). Plaintiff makes no such
5 showing in his objections, and merely repeats the arguments raised in response to the summary
6 judgment motion and rejected in the Report and Recommendation. The Report and
7 Recommendation (Dkt. 37) should be adopted and the case dismissed.

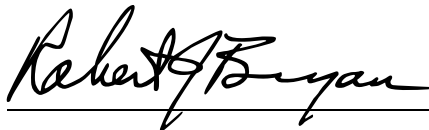
8 **ORDER**

9 It is **ORDERED** that:

- 10 • The Report and Recommendation (Dkt. 37) **IS ADOPTED**; and
11 • This case **IS DISMISSED**.

12 The Clerk is directed to send uncertified copies of this Order to J. Richard Creatura, all
13 counsel of record, and to any party appearing *pro se* at said party's last known address.

14 Dated this 31st day of May, 2016.

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17 ROBERT J. BRYAN
18 United States District Judge
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